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**IN THE
COURT OF APPEALS OF INDIANA**

MYRON L. LOGAN, JR.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A03-0104-CR-119

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Robert J. Schmoll, Magistrate
Cause No. 02D04-0009-CF-465

December 18, 2001

MEMORANDUM DECISION - NOT FOR PUBLICATION

MATHIAS, Judge

Myron Logan (“Logan”) was convicted of Unlawful Possession of Firearm by a Serious Violent Felon, a Class B felony, and sentenced to an executed fifteen-year sentence. Logan appeals asserting that the trial court erred in denying his Motion to Suppress, and that the State presented insufficient evidence to support his conviction

We affirm.¹

Facts and Procedural History

The facts most favorable to the judgment reveal that on August 28, 2000, Fort Wayne Police Officers Tad Davis and Craig Parkhill responded to an anonymous tip about a rape in progress. Upon arriving, the Officers observed Logan arguing with his girlfriend Crystal James (“James”). According to the Officers, both Logan and James were “sweating, panting heavily and their clothes (were) both soiled.” R. at 120. The Officers separated the couple, and Officer Davis spoke with Logan. When Logan approached Officer Davis “with his hands concealed” in his clothing, Officer Davis informed him that he was going to do a “patdown.” R. at 123-24. Specifically, Officer Davis informed Logan “I’m going to pat you down for my safety.” R. at 124. Before Officer Davis could begin performing the patdown, Logan informed Officer Davis that he had a weapon. Officer Davis found a .38 caliber revolver in Logan’s front waistband. Officer Davis asked Logan if he had a permit to carry the handgun, and Logan replied, “No way. I’m on parole.” Appellant’s App. p. 198.

¹ Oral argument in this appeal was held at Homestead High School in Fort Wayne, Indiana, on November 14, 2001.

Logan was charged with Unlawful Possession of Firearm by Serious Violent Felon, a Class B felony.² Prior to trial, Logan moved to suppress the revolver stating that the patdown search was conducted without a warrant and was therefore, a violation of his Fourth Amendment rights under the United States Constitution, and his rights under Article I, section 11 of the Indiana Constitution. After conducting a hearing on Logan's Motion, the trial court overruled Logan's Motion to Suppress, and allowed the revolver into evidence. The jury found Logan guilty as charged.

After the jury trial, the trial court held a sentencing hearing, wherein the trial court sentenced Logan to fifteen years, adding five years to the presumptive term for a Class B felony³. In so finding, the trial court listed several aggravating factors, including Logan's extensive, previous criminal record, his failure of past rehabilitative efforts, and the fact that Logan was on parole when the offense occurred; the trial court also listed one mitigating factor, that Logan had two dependent children. Logan now appeals his conviction and sentence.

Discussion and Decision

A. Constitutional Search and Seizure

Logan first argues that the trial court erred in denying his Motion to Suppress. More specifically, Logan argues that Officer Davis' warrantless patdown search was a violation of his Fourth Amendment rights under the United States Constitution and his rights under Article I, section 11 of the Indiana Constitution, resulting in the need for the suppression of the revolver.

² Ind. Code § 35-47-4-5 (1998).

³ See Ind. Code § 35-50-2-5 (1998).

The trial court is afforded broad discretion in ruling on the admissibility of evidence, and we will reverse such a ruling only upon a showing of abuse of discretion. Johnson v. State, 710 N.E.2d 925, 927 (Ind. Ct. App. 1999). Upon review of a trial court's ruling on a motion to suppress evidence, we will examine the evidence most favorable to the ruling, together with any uncontradicted evidence. Johnson, 710 N.E.2d at 927; State v. Joe, 693 N.E.2d 573, 575 (Ind. Ct. App. 1998), trans denied. We will neither reweigh the evidence nor judge witness credibility. Johnson, 710 N.E.2d at 927.

“The Fourth Amendment to the United States Constitution and Article I, section 11 of the Indiana Constitution protect both privacy and possessory interests by prohibiting unreasonable searches and seizures.” Id. (citing Culpepper v. State, 662 N.E.2d 670, 675 (Ind. Ct. App. 1996)). Generally, a search must be reasonable and conducted pursuant to a properly issued warrant. Id.; Webb v. State, 714 N.E.2d 787, 788 (Ind. Ct. App. 1999). When a search is conducted without a warrant, the State bears the burden of proving that the search was justified under one of the few, well-delineated, narrow, exceptions to the warrant requirement. Id.

One such exception was first announced by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968). Termed an investigatory stop and frisk, Terry, held that an officer can, without a warrant, approach a person for purposes of investigating possible criminal behavior without probable cause to make an arrest, and to execute a reasonable, limited search of the person for weapons for the officer's own protection and safety. Burkett v. State, 691 N.E.2d 1241, 1244 (Ind. Ct. App. 1998), cert. denied (summarizing Terry, 392 U.S. at 1 (1968)). In so holding, the Terry Court stated:

Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

Terry, 392 U.S. at 27 (citations omitted). We therefore look at the facts and circumstances of each case to determine whether a particular warrantless search violates the guarantees of the Fourth Amendment, or Article I, section 11. Joe, 693 N.E.2d at 575.

Based on the evidence before us, we cannot say that the trial court abused its discretion in ruling that Officer Davis was justified in conducting an investigatory stop and frisk of Logan for Officer Davis' own safety, and in ultimately denying Logan's Motion to Suppress. The clear weight of the evidence shows that Officers Davis and Parkhill arrived at a volatile scene and observed Logan and James arguing, both wearing soiled clothing consistent with a physical altercation. The officers separated the couple and Officer Davis proceeded to speak with Logan, separately from Officer Parkhill's interrogation of James. When Logan approached Officer Davis "with his hands concealed" in his clothing, Officer Davis informed Logan that he was going to perform a patdown for the Officer's own safety. Under these facts and circumstances, it was not unreasonable for Officer Davis to have believed that Logan might have had a weapon

concealed within his clothing and was attempting to withdraw that weapon. In fact, Logan did have a weapon concealed in his waistband, informed Officer Davis about it, and relinquished it just prior to Officer Davis' commencement of the patdown. Performing an investigatory patdown under these circumstances was not unreasonable. The trial court did not abuse its discretion in denying Logan's Motion to Suppress and allowing the revolver to be used as evidence.

B. *Sufficiency of the Evidence*

In addition to his Fourth Amendment, and Article I, section 11 argument, Logan argues that the State presented insufficient evidence to support his conviction. Our standard of review when considering a claim of sufficiency of the evidence is well settled. We will not reweigh the evidence or assess the credibility of witnesses. Fields v. State, 679 N.E.2d 898, 900 (Ind. 1997); Moore v. State, 723 N.E.2d 442, 451 (Ind. Ct. App. 2000). Only the evidence most favorable to the verdict, together with all reasonable inferences that can be drawn therefrom, will be considered. Moore, 723 N.E.2d at 451 (citing Weaver v. State, 702 N.E.2d 750, 752-53 (Ind. Ct. App. 1998)). If a reasonable trier of fact could have found the defendant guilty based on the probative evidence and reasonable inferences drawn therefrom, then a conviction will be affirmed. Id. We will apply this standard whether the evidence is direct or circumstantial in nature. Burgess v. State, 461 N.E.2d 1094, 1098 (Ind. 1984).

In support of his sufficiency argument, Logan argues that the State failed to prove three material elements: (1) that the defendant had been previously convicted of a battery which qualified him to be a serious violent felon; (2) that the individual that was

identified as Myron L. Logan, Jr. who had committed a previous battery was one and the same as the Myron L. Logan, Jr. who was the defendant in the present case; and (3) that the Defendant had knowledge that he was a serious violent felon at the time he possessed a firearm. Br. of Appellant at 6.

Indiana Code section 35-47-4-5 provides in relevant part:

(a) As used in this section, “serious violent felon” means a person who has been convicted of:

(1) Committing a serious violent felony in:

(A) Indiana; . . .

(b) As used in this section, “serious violent felony” means:

(4) battery as a Class B felony (IC 35-42-2-1(a)(4)) or class C felony (IC 35-42-2-1(a)(3));

(c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Class B felony.

Ind. Code § 35-47-4-5 (1998).

More than two years prior to the incident now on appeal, on January 5, 1998, one Robbie Schmitt (“Schmitt”)⁴ filed an Affidavit for Probable Cause against Myron Logan for Battery. In his Affidavit, Schmitt described Myron Logan as being a black male with a birth date of December 8, 1972. R. at 218. Schmitt also listed Myron Logan’s social security number. Id. Schmitt’s Affidavit led to the eventual arrest and conviction of Myron Logan for Battery, a Class C felony. Logan’s offense report from the Fort Wayne Police Department, which Officers Davis and Parkhill generated while investigating

⁴ Schmitt was the victim involved in an earlier battery charge filed against Logan on January 8, 1998.

Logan during the incident involving James, indicates that he is a black male with a birth date of December 8, 1972, and an identical social security number as that of the Myron Logan involved in the Schmitt battery. R. at 224. Although Logan argues that the State failed to prove that he had been previously convicted of a battery that qualified him to be a serious violent felon, we find the evidence clearly indicates otherwise.

On January 5, 1998, Fort Wayne Police Officer, Susan Ulrich filed an Information for Battery, charging Logan with violation of Indiana Code section 35-42-2-1, a Class C felony.⁵ In pertinent part, Logan's Information stated:

On or about the 03rd day of January, 1997, in the County of Allen and in the State of Indiana, said defendant Myron L. Logan, Jr. did knowingly or intentionally touch Robert E. Schmitt in a rude, insolent, or angry manner, resulting in serious bodily injury to wit: by striking him with a pool stick, said act resulting in a serious bodily injury to Robert E. Schmitt

R. at 219 (emphasis added). Following a bench trial, Logan was found guilty of violation of Battery, a Class C felony, and sentenced to the Department of Correction for a period of two years.⁶ R. at 221.

A serious violent felon is a person who has been convicted of committing a serious violent felony. Pursuant to Indiana Code section 35-47-4-5(b)(4), a serious violent felony includes violation of Indiana Code section 35-42-2-1(a)(3). Although Logan's Information does not specify under which subsection of Indiana Code section 35-42-2-1 Logan was charged, the Information makes clear that Logan was charged, and ultimately convicted, with violation of subsection (a)(3), which states that Battery is a "Class C felony if it results in serious bodily injury to any other person. . . ." Ind. Code § 35-42-2-

⁵ On November 30, 1998, the Deputy Prosecuting Attorney filed an Amended Information for Battery, modifying the body of the Information slightly.

⁶ Logan was given credit for 240 days already served.

1(a)(3) (1998) (emphasis added). Based upon this evidence, we find there was sufficient evidence that Logan was convicted of a battery that qualified him as a serious violent felon.

Having established that the trial court properly identified Logan as a serious violent felon, we now move to Logan's third allegation that Logan lacked the requisite knowledge that he was a serious violent felon at the time he possessed a firearm.⁷ Nowhere in the statute is there a requirement that a Defendant have knowledge of being a serious violent felon at the time of possessing a firearm. The requisite knowledge is of possession of a firearm, and not of being a serious violent felon. The statute is very clear on this point, "a serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession. . . ." Ind. Code § 35-47-4-5 (1998) (emphasis added). While Logan unsuccessfully disputes that he was a serious violent felon pursuant to the statute, no one disputes that Logan knowingly or intentionally possessed a firearm, and therefore, there was sufficient evidence for the trial court to correctly determine that Logan committed unlawful possession of a firearm.

Conclusion

Because we find that the trial court did not abuse its discretion in denying Logan's Motion to Suppress, and that the State introduced sufficient evidence to support Logan's

⁷ Logan also argues that because his acts occurred prior to the effective date of the statute, there is no way that he would know that his actions of carrying a handgun violated the newly effectuated statute. However, ignorance of the law has never been an excuse. Mullins v. Kinder, 568 N.E.2d 1087, 1090 (Ind. Ct. App. 1991). We therefore, reject Logan's argument. Also, pursuant to our holding in Teer v. State, 738 N.E.2d 283, 287 (Ind. Ct. App. 2000) (holding that the serious violent felon statute does not violate the ex post facto prohibition), we reject Logan's ex post facto argument asserting that Indiana Code section 35-47-4-5 does not apply because a statute can only be prospective in nature, and Logan's alleged felony violation occurred prior to the enactment of the statute.

conviction for unlawful possession of a firearm by a serious violent felon, the trial court is therefore affirmed.

Affirmed.

MATTINGLY-MAY, J., and BARNES, J., concur.